



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Omni International Distributors, Inc.

**File:** B-257220

**Date:** September 9, 1994

### DECISION

Omni International Distributors, Inc. protests the rejection of its offer under request for proposals (RFP) No. F39601-94-R00005, issued by the Department of the Air Force for camouflaged parkas and pants.

We dismiss the protest.

The RFP required offerors to propose clothing manufactured with "Gore-Tex or equal" fabric. "Gore-Tex" is a registered trademark of W.L. Gore & Associates, Inc. Offerors proposing clothing manufactured with purportedly equal fabrics were required to submit fabric samples. The RFP further provided that equal products had to be clearly identified by brand name and make or model number and that offerors were responsible for providing descriptive technical literature sufficient to enable the contracting officer to determine that the products offered were equal to those manufactured with Gore-Tex.

Seven proposals were received. The lowest-priced proposal was submitted by 8000 Meters, Inc.; Omni submitted the second-low proposal and Adventure Tech, Inc. submitted the third-low proposal. Five proposals, including those from 8000 Meters and Omni, were rejected as technically unacceptable. Omni and 8000 Meters proposed clothing manufactured on an "or equal" basis and submitted virtually identical fabric samples and one-page data sheets. The contracting officer states that he could not determine from either the samples or the data sheets the identity of the manufacturer or whether the products offered were equal to those manufactured with Gore-Tex. Adventure Tech, which proposed clothing manufactured with Gore-Tex, was awarded the contract.

In its protest, Omni contends that it proposed a fully compliant product which was lower in price than Adventure Tech's. The agency submits that Omni is not an interested party because, if we were to sustain the protest and find that the protester's sample and descriptive literature were

sufficient to establish that its products were equal to Gore-Tex, 8000 Meters and not Omni would be in line for award because each firm proposed virtually identical products and 8000 Meters offered a lower price than Omni. In its comments on the agency report, Omni suggests that differences exist between the two proposals so that 8000 Meters' offer might be rejected while Omni's might not and, thus, the protester argues that it is an interested party.

We need not decide the merits of this case. Even if we sustained the protest and recommended acceptance of Omni's proposal, the firm would not be in line for award; therefore, no useful purpose would be served by our considering the matter. See Ven-Tel, Inc., B-204233, Mar. 8, 1982, 82-1 CPD ¶ 207; Ebon Research Sys., B-253833.2; B-253833.3, Nov. 3, 1993, 93-2 CPD ¶ 270.

In reaching this conclusion, we have examined the proposals of 8000 Meters and Omni. The only difference between them--except for price--is that Omni offered clothing with a nylon taffeta hung liner while 8000 Meters did not. Since this form of lining was not required by the RFP, the differences generally alluded to by Omni in its comments are immaterial.

Finally, Omni alleged in its protest filed on May 4, that the RFP contained no salient characteristics listing the attributes of a proposed fabric that would be examined to determine equality with Gore-Tex. This alleged defect was apparent from the face of the solicitation and, therefore, according to our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1994), Omni was required to raise the issue in a protest filed before the time set for receipt of proposals on March 10. Since the issue was not raised until May 4, it is dismissed as untimely.

The protest is dismissed.



John Van Schaik  
Acting Assistant General Counsel